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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,455	03/17/2004	Manfred Heisler	WAS 0627 PUS	4002
22045 7590 09/21/2009 BROOKS KUSHMAN P.C. 1000 TOWN CENTER TWENTY-SECOND FLOOR SOUTHFIELD, MI 48075			EXAMINER SORKIN, DAVID L	
			ART UNIT	PAPER NUMBER
			1797	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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In re application of :
Heisler et al. : DECISION ON
Serial No. 10/802,455 : PETITION
Filed: March 17, 2004 :
For: PROCESS FOR THE CONTINUOUS PREPARATION OF HIGH-VISCOSITY
SILICONE COMPOSITIONS

This is a decision on the PETITION UNDER 37 CFR 1.181 TO WITHDRAW THE FINALITY OF THE OFFICE ACTION mailed August 5, 2009, which was timely filed on August 14, 2009.

A Request for Continued Examination (RCE) was filed in the instant application on July 30, 2009. A Declaration under Rule 132 and a Declaration under Rule 131 were also filed at the same time. The examiner prepared a first action final which was mailed on August 5, 2009.

DECISION

The standard for making an Office action final is set forth in section 706.07(b) of the MPEP which states:

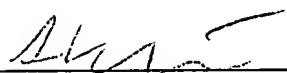
706.07(b) Final Rejection, When Proper on First Action

The claims of a new application may be finally rejected in the first Office action in those situations where (A) the new application is a continuing application of, or a substitute for, an earlier application, and (B) all claims of the new application (1) are drawn to the same invention claimed in the earlier application, and (2) would have been properly finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application.

In this case, the first criteria is met by the filing of a continuing application on July 30, 2009. Turning to the second criteria, it is noted that no amendments were filed with the RCE filing. Accordingly, the first part of the second criteria is met. The final Office action of August 5, 2009 maintained the claim rejection set forth in the previous Office action of May 7, 2009. Thus, the second part of the second criteria is also met.

The petition alleges that the final Office action failed to take note of Applicants' arguments or answer the substance of the Applicants' arguments. This is not persuasive, as page 7 (paragraphs 4 and 5) of the final Office action clearly set forth the reasoning as to why the Declaration were unsatisfactory. The further argument that MPEP 706.07(b) prohibits a final first Office action in an RCE where the application contains material which was presented in the earlier application after final rejection but was denied entry because new issues were raised that required further consideration and/or search is not persuasive, because the Declarations, while filed after the final Office action in the earlier application, were not denied entry.

The final Office action of August 5, 2009 is deemed to be proper. Accordingly, the Petition is **DENIED**.



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